

JEFFERSON COUNTY COMMISSIONERS
COURTHOUSE, BOX H
BOULDER, MT 59632
PHONE 406-225-4025
FAX 406-225-4148

TOM LYTHGOE, CHAIR

DAVE KIRSCH

LEONARD WORTMAN

**PROCEEDING OF THE BOARD OF COMMISSIONERS
COUNTY OF JEFFERSON, STATE OF MONTANA
May 25, 2010**

Present: Commissioners Lythgoe, Kirsch and Wortman; Harold Stepper and Mike Hoffman, County Planners; Matt Johnson, County Attorney; Dennis Owens, Assistant County Attorney; Carolyn Henry, Safety Coordinator; Joe Carter, Road Foreman; Sally Buckles, DES Coordinator; Tom Collela, Jefferson Broadband; Brad Molnar, Public Service Commissioner; Jan Anderson, *Boulder Monitor/Jefferson County Courier*; Dick and Dixie Rennie, Barbara Sunderland, Louis Mills, Betty Mockel, Doug Salsbury, Pat Lewis, Colleen Teeling, Sue Pullman, Deb Hanniman, John Kuntz, Sheila Hogan

MINUTES

Commissioner Lythgoe moved to approve the minutes of May 11. Commissioner Kirsch seconded. The motion carried.

CORRESPONDENCE

Commissioner Lythgoe noted the receipt of an e-mail from Harold Blattie at MACo. There was discussion at the district meeting held on Friday regarding the MSTI line and he feels that it would be good for the counties involved to get together to discuss this. Possible dates were discussed and will be sent to Harold in reply.

CALENDAR REVIEW

5/25 Fair Board – 6:30
Mosquito Board – 7:00
5/26 JLDC – Extension Office – 2:00
5/27 Salary Compensation Committee – 9:00
MSTI Coordination meeting – 10:00
5/31 Holiday – County Offices closed

COMMISSION REPORTS

SOLID WASTE BOARD

Commissioner Wortman stated that at the last Solid Waste Board meeting they made the decision to re-advertise the Solid Waste Manager position. The board has set up a special meeting for June 1 to go over the applications.

SUBDIVISION REVIEW

DISCUSS AND DECIDE ON RELEASEING BOND FOR THE JEFFERSON ACRES SUBDIVISION IMPROVEMENT AGREEMENT

Mike stated that they aren't quite ready to go at this time. This item will be on a future agenda for decision.

FINAL PLAT REVIEW – SHEEP MOUNTAIN 1, 2, 3, AND 4 MINOR SUBDIVISIONS

Mike Hoffman, County Planner, presented his staff report on these subdivisions, located northwest of Clancy. Each of the parcels contains approximately 21.04 acres and are proposed to be split into five lots ranging in size from 1.502 to 13.873 acres. Variances were requested to allow for lots to be divided by a public street, road, alley or right-of-way and regarding road plans.

Mike recommended that final plat approval be granted.

Commissioner Kirsch stated that he doesn't see anything regarding fire in the documents. Mike directed Commissioner Kirsch's attention to Condition of Approval 14 which required the developer to develop a fuel modification plan as well as complete thinning of trees within the subdivision to reduce the risk of fire. Commissioner Kirsch asked if these people are to be left without fire protection. Mike stated that the subdivision is within the Clancy Fire District.

Commissioner Wortman stated that this leaves somewhat of a sour taste in his mouth; they are basically doing a 20-lot major subdivision, but it is being treated as minors because of the mining claims. Mike stated that from a planning standpoint it really is a major subdivision, but they are unable to classify it as a major subdivision under state statute. Harold Stepper stated that part of the problem is that each of these mining claims is a tract of record and can be split. He would hope that in the future if the legislature wants to do something they would address this issue. From a planning standpoint, it becomes a headache to get services in.

Commissioner Lythgoe asked Joe Carter, Road Supervisor, if he had a chance to look at the things he wanted to check on. Joe stated that he did talk to one of the sub-contractors on the project regarding getting the road re-bladed and rolled to get the compaction needed for the surface course. The contractor stated that he will get this done as soon as his roller is repaired and Joe had received an e-mail stating this.

Commissioner Wortman moved to grant final plat approval to the Sheep Mountain 1, 2, 3 and 4 minor subdivisions. Commissioner Lythgoe seconded. The motion carried.

ITEMS FOR COMMISSIONERS ACTION OR REVIEW

APPOINT BOARD MEMBERS

Commissioner Lythgoe moved to appoint Sam Samson, Nita McCauley, Carolyn Lewis and Colleen Teeling to the Highway 69 bike/ped trail advisory committee to MDT. Commissioner Wortman seconded. The motion carried.

DISCUSS AND DECIDE ON FUNDING FOR PRINTING OF CITIZEN EVACUATION GUIDES

Sally Buckles, DES Coordinator, stated that the evacuation guides have been approved by all three counties (Lewis & Clark, Jefferson and Broadwater) in the Tri-County Fire Working Group, and doing a group printing will lower the costs for everyone. She is requesting \$1,640.00 for Jefferson County's portion of the printing. Sally explained that this is a citizen's evacuation guide that came from Riverside, California and was re-written by the Helena Fire Department. The guide would be distributed to residents in the wildland-urban interface.

Commissioner Lythgoe stated that this is something that Tri-County fire has been working on for some time. It has been getting more attention with all of the beetle-kill that is currently in the area. Evacuation plans have become even more important with the current conditions.

Commissioner Wortman moved to approve funding in the amount of \$1,640.87 for printing the evacuation guides, with the money coming from Title III funds. It was noted that a public hearing, with a 45-day notice, is required for the use of Title III funds. Commissioner Wortman withdrew his motion.

Commissioner Lythgoe moved to fund now out of PILT, notice public hearing regarding Title III funds, and reimburse PILT from Title III if approved. Commissioner Wortman seconded. The motion carried.

APPOINT ELECTION JUDGES

Commissioner Wortman moved to appoint the election judges as presented by the Clerk and Recorder. Commissioner Lythgoe seconded. The motion carried.

APPOINT FIRE TRUSTEES

Commissioner Wortman read a memo from the Clerk and Recorder stating that Greg Vauthier decided not to register as an elector and is therefore not qualified to serve as a fire district trustee. She requested that Mike Jones be appointed to serve.

Commissioner Wortman moved to appoint Mike Jones as a Jefferson City fire trustee. Commissioner Lythgoe seconded. The motion carried.

DISCUSS AND DECIDE ON REIMBURSEMENT OF BACK TAXES ON PARK LAND IN THE MOCKEL SUBDIVISION

Betty Mockel stated that her husband John developed a subdivision in 1995. They were required to dedicate parkland to the homeowners association. This was done and a warranty deed was provided. In September 1996, they received a notice that the homeowners association was dissolved because annual report fees had not been provided. He tried to contact the homeowners association by mail, but they aren't sure if it was ever received. They were south for the winter and heard from their son that he had received a notice that there were taxes due. She called the Treasurer's Office and worked with Patty to try to get something done. She said that if they paid the back taxes they could go through the process to have the parkland reassigned to them. Notices were sent to the homeowners and no response was received. Patty suggested that they get some legal help. Betty said that they contacted their county attorney who gave them the name of an attorney in Helena. They advertised in the *Whitehall Ledger* and *The Boulder Monitor* that they were going through the process of getting the parkland reassigned. After they got the deed, John contacted their realtor to sell the property. He was told at that time that the parkland can't be sold. They were never told when trying to get the land reassigned to them that they would be unable to sell the parkland.

Betty stated that the previous day they got a bill for over \$600 for taxes. They don't want to pay taxes on useless property, but they don't want a bad mark on their name. She talked to Patty some time ago, and they have paid \$1,539.92 in taxes on this property. She asked if the Commission has any suggestions.

Commissioner Wortman asked who the warranty deed made out to originally. Betty said that it was to the homeowner's association. They got a letter from Secretary of State that the association had been dissolved because they didn't file reports and pay fees. Commissioner Wortman stated that if they own the land, it seems that they should be able to do what they want with it. Betty stated that she has talked to Harold Stepper and it is in statute that parkland cannot be sold; they just wish that someone would have told them this along the way.

Commissioner Wortman stated that he is a bit confused; if they got it through a tax deed, it doesn't belong to the homeowners association any longer. Harold said that once it has been dedicated as park ground, by statute it cannot be sold. It remains on the books as dedicated park ground. They have tried through two legislative sessions to get this reversed, where they don't have to take park ground in major subdivisions. They have been unsuccessful. If the county takes it back as a tax deed, the county is stuck with these small slivers of ground all over the county. Commissioner Lythgoe asked how many slivers of ground like this we own. Harold stated that there are a lot. Commissioner Lythgoe said that they have been pushing for payment-in-lieu of park ground, because we don't want all of these little pieces of ground. Harold said that really the only thing they could do is let it go back for tax deed and it will essentially sit there. Commissioner Lythgoe said what they Mockels don't want a bad mark against their name. Harold said that he realizes this and wishes that there was some other way to deal with this. Commissioner Wortman stated that maybe they should table this for a couple weeks and talk to Patty and Bonnie to get their input. If this is dedicated park ground, he thinks they need to pay

the Mockels back their back taxes and take this off the books somehow.

Matt stated that we do have a lot of parkland throughout the county and the only thing that the county can do is keep accumulating them. Can do a study of all of the parkland and then use that study to determine which are true parks and which to sell off.

Commissioner Wortman asked if dedicated parkland usually taxed. Matt stated that for the most part, it isn't supposed to be. Betty asked if this is true, why they are being taxed for it if it is still parkland. Commissioner Lythgoe said that if the county owned it, it wouldn't be taxed; if the homeowner's association owns it, it will be taxed and if a private citizen owns it, it will be taxed.

Harold stated that if we do perform the study and decide to sell parkland, only half of the money raised can be used for maintenance of parkland, the other half is to be used for purchase of more parkland.

Commissioner Lythgoe stated that it is probably wise to have more discussion on this; this issue will be put on the agenda two weeks out and Bonnie and Patty will be invited to attend that meeting.

SIGN SITE USE AGREEMENT BETWEEN JEFFERSON BROADBAND AND JEFFERSON COUNTY DES

Tom Colella, president of Jefferson Broadband, stated that they have a longstanding relationship with the County and DES system with the four spots on the north end of the county where they supply bandwidth that transmits the radio station. Their intent is to transfer assets to Cutthroat Communications. They are trying to get their house in order and make sure that they have signed use agreements for the locations where there is a relationship between Jefferson Broadband and DES to make sure that it is stated that they have been doing business for the past several years. That aspect can then transfer to Cutthroat so that they can continue to offer service.

Roughly two years ago Jefferson Broadband was able to get a metal mines grant to upgrade the portions of the network that bring bandwidth into the area. As part of that project, they were able to move all of the DES links that are on this end of the county to a licensed public safety frequency. He has five use agreements with Ash Grove, Emerson Peak in Jefferson City, the Wickes site, the airport site in Boulder, and at the fire station in Jefferson City.

Commissioner Lythgoe stated that when they talked last week, his main concern was with Ash Grove. Tom stated that they have a meeting scheduled for June 8th that he, Sally and a representative from Cutthroat will attend. Ash Grove has made it clear that they never wanted to use the piece of property where the transmitter is located for commercial reasons, so the fact that they are transferring assets to Cutthroat could be an issue. The documents that he has today are for the relationships that they currently have with Jefferson County and DES.

Pat Lewis, Jefferson Broadband, stated that this isn't any different that what they have been doing, it is just on paper rather than being settled with a handshake.

Commissioner Wortman moved to have the chair sign the agreements. Commissioner Lythgoe seconded. The motion carried.

DISCUSS AND DECIDE ON USE OF TITLE III MONIES FOR ELKHORN SEARCH & RESCUE

Commissioner Lythgoe moved to use \$32,286 of Title III funds for the purchase of equipment for Elkhorn Search and Rescue. Commissioner Wortman seconded. The motion carried.

CAROLYN HENRY – PRESENT CHANGES TO SAFETY MANUAL

Carolyn Henry, Safety Coordinator, stated that she has been working on revising the safety manual for the past year. She has presented the revised manual to the Commission with changes suggested by MACo and reviewed the changes that have been made.

Carolyn said that it was discussed, at the last minute, to send the draft to the department heads and elected officials. She can do this via e-mail with the changes highlighted if the Commission wishes. Commissioner Lythgoe stated that he doesn't feel that this is necessary.

SAFETY AND HEALTH UPDATE

Carolyn stated that she spoke to our insurance representative for Workman's Comp the previous week who told her that our mod factor is down to .77. Last year it was at 1.1. The lowest possible mod factor is .75 and Jefferson County in the top ten for the lowest work comp mod factor in the state. She estimates that the savings on their insurance premiums will be from \$55,000 to \$65,000, and Bonnie can give a more accurate figure after the budget process.

Carolyn said that the Safety committee did an annual safety inspection of all of the departments this year which was really successful. They were pleased that most departments had relatively few issues and if they did have any issues they got right in and took care of them.

Carolyn said that she has been asked by Emelia at MACo to apply for the Governor's safety award because of all of the progress we have made. She has completed and submitted the application.

Carolyn stated that the next project is to work on re-writing the blood-borne pathogens policy. We have a written form, but it needs to be reorganized; the Health Department will be taking responsibility for follow-up of the policy.

MACo wants us to establish a return-to-work program. Our incidents have been so low that we haven't been required to deal with this, but the Safety Committee will be working to develop this.

DISCUSS AND DECIDE ON RATIFICATION OF CHANGES TO SAFETY MANUAL

Commissioner Lythgoe stated that he knows how hard Carolyn has worked on this and what the Safety Committee has accomplished.

Commissioner Wortman moved to ratify the changes to the safety manual. Commissioner Lythgoe seconded. The motion carried.

Carolyn stated that after the new manuals are printed they will be distributed to every employee.

DISCUSS COORDINATION REGARDING MSTI PROJECT

Commissioner Lythgoe stated that we do have a meeting this Thursday with BLM and DEQ that will be held in the courtroom. Today, we are lucky to have a member of the Public Service Commission, Brad Molner.

Brad Molner, PSC, stated that he has been on the commission for six years representing southeast Montana. During many discussions of the PSC, they have consistently voted 5-0 on topics related to MSTI. This includes them intervening for the first time at the federal level with the Federal Energy Regulatory Commission (FERC) with the first applications by NorthWestern Energy and for the first time they will be interveners at the economic impact statement with DEQ, and that morning they voted to be interveners in their open season at the federal level. All five Commissioners representing every segment of Montana shows concerns with the citizens. He stated that he doesn't know about coordination, but he wishes that all Montanans had Commissions that would take the actions that the Jefferson County Commission has as opposed to reading the headlines about what happened.

He presented the Commission with copies of documents from either Bonneville Power or NorthWestern Energy. The first issue he touched on came from the draft EIS. He said that you will hear continually from NorthWestern Energy that we won't have to pay for MSTI, but the report states that "while the direct costs of MSTI will not be directly recoverable in rates, it is not possible to rule out secondary market impacts from a major development such as the MSTI project".

A legal doc filed in April 2009 states that "Phase shifting transformers will ensure that power scheduled by MSTI customers flows onto the MSTI line. Moreover, MSTI is not needed to serve NorthWestern's native load customers." Brad noted that none of this is built for Montanans, which as far as the Siting Act goes, is a critical component for eminent domain.

Brad noted that there are currently three customers seeking export service, PPL Montana, Powerex and Idaho Power. This is being sold as a green power line, but none of these companies have renewable energy.

Another document noted that NorthWestern has over 5,000 MW of interconnection requests pending in its queue, of which approximately 3,000 MW is wind generation. However, NorthWestern already has 3,200 MW connected to its system and its peak loan is only 1,805 MW.

Brad stated that this project will cost more than NorthWestern is worth.

Brad said that San Diego wants the energy credits but it doesn't want the wind power, so they will buy the renewable energy credits from a major earner, buy our coal power, say "this represents 'x' amount of clean power applied to your coal and brings us down to 50%." He stated that the energy is sold into the mid-C and distributed back. What they are saying is that they might need 20,000 MW, we're going to call it clean, green renewable, but we don't want to buy the wind power. The transmission is too expensive and we need something to keep the lights on when the wind isn't blowing. We don't want a lot of regulating reserve that costs billions of dollars, we'll buy these financial instruments – renewable energy credits and coal power from Montana or wherever else we can get it – and call it green because we bought these certificates from someone else somewhere in the nation.

Commissioner Lythgoe asked what kind of control the PSC have over the project. Brad said that when the Federal Regulatory Commission gave rate-base to the collectors, they will have some capacity on rates. They will be able to voice concerns to the feds on the regulatory commission as an intervener.

Brad said that he was told today that the Commission will probably not make statement until the EIS is out. It seems to him that asking if this is an appropriate expenditure is a better start. Certainly at the DEQ level, becoming an intervener there will have some impact.

Brad stated that if as the county is going through this process needs any help, he has a complete staff of economists and attorneys that he can offer.

Commissioner Wortman said that he has been asked several time, and he has wondered himself, if the line is a done deal. Brad stated that it is not; it is very economically challenged. This is going to be a huge investment. Nothing at this stage of the game is done. This doesn't serve the people of Montana, so there is no public interest and therefore no eminent domain. Commissioner Wortman said that this is a question that he has had, how to do eminent domain in Montana for something that benefits California. Brad said that it would fall under federal eminent domain laws, and you can't even challenge that. You get a check in the mail and they show up and build.

Commissioner Lythgoe stated that regionally it is a challenge; not a given that it is going to happen. Is that a driving force why it won't happen in Montana, or is what we do in Montana going to affect what will happen. Brad stated that it all has to pencil out at some point and it all has to be legal. Trans-Canada trying to develop the Chinook Line, and they need \$3 billion to do it. They aren't going to risk that kind of money to do it with an uncertain future in California, which means they have to go and get the contracts first. Nothing is a done deal. The Legislation could come in and do what Wyoming just did. They suspended eminent domain for two years until the legislature can meet again.

Bill Petrovish from the Townsend area stated that he would like to commend the Commission for standing up for the citizens, something their Commissioners aren't doing for some reason. What can they do; they have 300 signatures. Bill said that the power of the people becomes very

important and non-important as they go through this process. Obviously, FERC doesn't care what you think. The branded power can care when our Senators say, "about your funding sir". Brad said that he can talk to those Commissioners, although they probably don't care because they are looking at the amount of tax dollars they think they are going to get from the substation, and someone can say that it is all going to the schools. Brad suggested editorials in the paper, but they must be accurate and to the point. The more the issue is raised, the more chance they will have. It is up to citizens to get the truth out. Bill said that they are burning candles on both ends. He had a commissioner tell him yesterday to get on board; this has been a done deal for four years.

John Kountz said that they are talking about moving the line; maybe they should be talking about stopping the line.

Commissioner Lythgoe thanked Commissioner Molnar for coming and said that he very much appreciates the offer for help and for his staff's help.

Commissioner Wortman moved to adjourn. Commissioner Lythgoe seconded. The motion carried.

MEETING ADJOURNED

ATTEST:

BONNIE RAMEY
CLERK AND RECORDER

TOMAS E. LYTHGOE, CHAIR

DAVE KIRSCH, COMMISSIONER

LEONARD WORTMAN, COMMISSIONER